# IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

## M.A.C.A.No.750 of 2006(C)

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O.P.(M.V.) NO.500/2000 OF THE COURT OF ADDL. MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

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**APPELLANT**/3RD RESPONDENT:-

THE BRANCH MANAGER,
UNITED INDIA INSURANCE COMPANY LTD.,
CHERTHALA, NOW REPRESENTED BY
ITS ASSISTANT MANAGER, REGIONAL OFFICE,
SHARANYA, HOSPITAL ROAD, COCHIN - 11.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

**RESPONDENTS**: PETITIONER & 4TH RESPONDENT:-

1. S.M.ZUBIRE, SUCHITHRA,
WARD NO.22, HOUSE NO.270,
BEACH NORTH, KOLLAM.

2. ANILKUMAR, S/O.APPUKUTTAN PILLAI,
PARAVILA MELETHIL PADINJATTINKARA,
KOTTARAKKARA.

R1 BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.VISHNU.R

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.Padmanabhan Nair,J.**

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M.A.C.A.No.750 of 2006-C

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Dated, this the 1st day of March, 2007

**JUDGMENT**

The 3rd respondent/Insurer in O.P.(M.V.)No.500 of 2000 on the file of the Motor Accidents Claims Tribunal, Alappuzha, is the appellant. The appeal is filed challenging an award passed by the Tribunal by which it was held that the driver of the autorickshaw is also negligent for the accident and apportioning the liability to 50%.

2. The short facts that are necessary for the disposal of the appeal are as follows: The 1st respondent, who was the petitioner in the claim petition, was travelling in a Ford Escort Car through Alappuzha - Ernakulam National Highway. When it reached Thanky junction, an accident took place in which the 1st respondent sustained very serious injuries. He filed the Original Petition claiming compensation alleging that when the car reached the place of accident, an autorickshaw driven by the 4th respondent, in a rash or negligent manner, suddenly entered into the National High way from a side road and in order to avoid a

head on collision, the driver of the car had to swerve the vehicle and it lost control and hit against median and thereby caused the accident. It was alleged that accident occurred solely due to the rash or negligent driving of the car as well as the autorickshaw. The Tribunal found that the accident occurred due to the negligence of the driver of the car as well as the autorickshaw and after fixing the total compensation of Rs.41,500/-, ordered that the appellant, who is the insurer of the autorickshaw, shall pay 50% of that amount.

3. The learned counsel appearing for the 1st respondent-claimant raised a preliminary objection that he filed M.A.C.A.433 of 2006 challenging the very same award and the same was dismissed by a learned Single Judge of this Court and as such this appeal is barred. That was an appeal filed by the claimant claiming enhancement of compensation. The admitted case of the 1st respondent in the claim petition was that the accident occurred due to the negligence of the drivers of both vehicles. So, in the appeal also he cannot take a different contention than the one he had raised in the petition. In this appeal the specific objection raised by the insurer, who was given

liberty to contest the matter on merits, was that the accident occurred due to the negligence on the part of the driver of the car and the driver of the autorickshaw has not attributed any part of it. By no stretch of imagination it can be said that the decision in M.A.C.A.No.433 of 2006 will operate as *res judicata*.

4. The learned counsel appearing for the appellant contends that the accident occurred due to the negligence on the part of the driver of the car. 1st respondent-claimant gave evidence as P.W.1. He gave evidence to the effect that the accident occurred due to the negligence on the part of the driver of the autorickshaw. He examined P.W.2, an independent witness, to prove the incident. Exhibit A3 is the F.I.R. registered in Crime No.54 of 1999. It is true that Exhibit A3 F.I.R. was registered against the driver of the car alone. Exhibit A5 is the final report. The Tribunal considered the records of the criminal case as well as the oral evidence adduced by the 1st respondent-claimant. Oral evidence adduced was to the effect that the accident occurred due to the fact that the autorickshaw suddenly entered into the National Highway from a pocket road. The Tribunal after assessing the evidence gave preference to the

oral evidence than that of the criminal case records. The Tribunal had the privilege of watching the demeanor of the witnesses and had chosen to accept the oral evidence of P.W.2. I do not think, it is just and proper to reverse that finding of fact based on the appreciation of oral evidence. The records produced would also show that the 1st respondent-claimant sustained serious injuries and he was awarded Rs.41,500/-, but the driver of the autorickshaw was made liable only for half of the amount. Considering the quantum of compensation ordered to be paid by the appellant also, I am of the view that the finding of the Tribunal does not call for any interference.

In the result, the appeal is dismissed.

I.A.Nos.856 of 2006 and 436 of 2007 also shall stand dismissed.

K.Padmanabhan Nair
Judge

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